

Special Needs and Pooled Trusts

Overview

Sometimes disabled people may receive funds from accident claims, inheritances, etc. It is possible to protect these funds so they are used for needs Medicaid does not cover. Placing them in a "Special Needs Trust" or a "Pooled Trust" does this. When the trust is set up the way Medicaid allows, the funds will not count as an asset when figuring the disabled person's Medicaid eligibility.

The purpose of the trust fund is to give the disabled person some funds that can be used for extra help. The funds can be used for things such as special medical, health, and nursing care; education, recreation and social activities; special medical equipment, respite care to give the regular caregiver a break, personal attendant care, etc. The trust funds must be used for the sole benefit of the disabled person.

Trust Requirements

To not count as an asset for Medicaid eligibility, both the Special Needs Trust and the Pooled Trust must:

1. Be set up for a disabled person,
2. State that funds are to be used only for the sole benefit of the disabled person,
3. State that, upon the death of the person, Medicaid will be repaid before funds are used for any other purpose.

These two trusts differ in that:

1. The Special Needs Trust must be set up for a disabled person under age 65.
The Pooled Trust does not have an age limit.
2. A not-for-profit group must manage a Pooled Trust.

Definitions

1. **Disabled Person:** A person who is disabled as defined in Section §1614(a)(3) of the Social Security Act. In general, this means a person must not be able to do any type of gainful work for at least a one-year period.
2. **Sole Benefit:** A trust is set up for the sole benefit of a blind or disabled person when only that person can receive benefits from the trust. If any other person can receive a benefit from the trust either now or in the future the trust is not for the sole benefit of the blind or disabled person. Reasonable rules for paying the trustee for time spent managing the trust are okay.
3. **State Receives What is Left:** The trust must have a rule that, upon the death of the disabled person, all remaining funds will be used to repay Medicaid for the benefits given to the person. Other people may be named to get any funds that are left after Medicaid has been repaid.
4. **Under 65 (Special Needs Trust):** When a trust is set up for a disabled person under age 65, the trust is exempt even after the person turns 65. However, funds cannot be added to the trust after the person turns age 65.
5. **Pooled Trusts:** These trusts have the same rules as a Special Needs trust except that they must be set up and managed by a not-for-profit group and the disabled person does not have to be under age 65 when the trust is set up. A separate account is set up for each person who gets benefits from the trust. For investment and management the funds are placed with or "pooled" with funds of other disabled people.

Annual Review

The Medicaid eligibility worker will review payments made from an exempt Special Needs Trust or Pooled Trust at least once each year.

Usually this will be done at the time of regular Medicaid review. The manager of the trust must let the worker know what was paid for during the year and why the payments were made. The focus of the review is to make sure that funds are being used for the sole benefit of the disabled person.

If funds are not used for the sole benefit of the disabled person they will count as an available asset. An overpayment will be figured from the date the funds were not used for the sole benefit of the person. The case will be closed. The person may reapply, but the manager of the trust will have to sign a statement that he understands and will obey the Medicaid sole benefit law. There could be problems if funds are used as shown in the examples below.

Example 1: The disabled person takes a vacation to Alaska and trust funds are used to pay for people that don't need to go. Medicaid knows that a disabled person may need someone to help them take a vacation in Alaska. Funds may be used to cover the expenses of a needed person. However, trust funds are not to be used to pay the expenses of other people who are not needed to help the disabled person be part of the activity or vacation.

Example 2: Trust funds are used to pay for insurance on the life of the disabled person. In this example there is nothing stating that the trust must own the policy and that the benefits must be used for the sole benefit of the disabled person. As written, there are a number of ways in which benefits from life insurance on the life of the disabled person could be used to benefit others.

Hearing Rights

Whenever a disabled person or representative disagree with a decision from Medicaid, they have a legal right to ask for a fair hearing. The request must be made within 90 days of the action with which they disagree. A hearing lets people give reasons why they think the action was not correct. The agency also explains why it believes the action was correct. An impartial Hearing Officer decides whether to affirm, reverse or modify the agency decision.

UTAH MEDICAID POLICY



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